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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 JUAN A. PORTILLO,
CDCR #H-80425,

12 Plaintiff,

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14 vs.
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16 DAVE KHATRI,
17 S. WALIA, et al.,

18 Defendants.
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Civil No. 06-2760 BTM (CAB)

ORDER:

**(1) CONSTRUING PLAINTIFF'S
"MOTION IN OBJECTION TO
UNITED STATES MAGISTRATE
JUDGE'S ORDER" AS A MOTION
FOR RECONSIDERATION;**

**(2) DENYING PLAINTIFF'S
MOTION FOR
RECONSIDERATION**

[Doc. No. 19]

21 On December 20, 2006, Juan A. Portillo ("Plaintiff"), an inmate currently incarcerated
22 at Centinela State Prison in Imperial, California and proceeding pro se, filed a civil rights
23 Complaint pursuant to 42 U.S.C. § 1983. Plaintiff did not prepay the civil filing fee required by
24 28 U.S.C. § 1914(a), but instead submitted a Motion to Proceed *In Forma Pauperis* ("IFP")
25 pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

26 On September 24, 2007, United States Magistrate Judge Cathy Ann Bencivengo denied
27 Plaintiff's ex parte Motion for Appointment of Counsel. Plaintiff then filed a "Motion in
28 Objection to the United States Magistrate Judge's Order Denying Plaintiff's Motion for

1 Appointment of Counsel” which this Court construes to be a motion to reconsider pursuant to
2 28 U.S.C. § 636(b)(1)(A).

3 **I. Plaintiff’s Motion for Reconsideration**

4 In this matter, all pre-trial proceedings have been referred to Magistrate Judge Cathy Ann
5 Bencivengo pursuant to Local Rule 72.3(e), “Assignment of § 1983 Prisoner Civil Cases to
6 United States Magistrate Judges.” However, Plaintiff is permitted to request that the Court
7 reconsider any pretrial matter “where it has been shown that the magistrate judge’s order is
8 clearly erroneous or contrary to the law.” 28 U.S.C. § 636(b)(1)(A).

9 As noted in the Magistrate Judge Bencivengo’s Order dated September 24, 2007, 28
10 U.S.C. § 1915(e)(1) provides district courts with the discretion, under “exceptional
11 circumstances” to appoint counsel to an indigent party in a civil action. *See* Sept. 24, 2007 Order
12 at 1 (citing *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991)). In his original Motion,
13 Plaintiff requested counsel because of his limited knowledge of the law and his limited English
14 speaking abilities. *See* Pl.’s Mot. for Appointment of Counsel [Doc. No. 15] at 2-3.

15 Magistrate Judge Bencivengo found, however, that these circumstances were not
16 sufficiently “exceptional” to require the appointment of counsel in light of Plaintiff’s ability to
17 adequately articulate the factual basis of his claims and the likelihood of success on the merits.
18 *See* Sept. 24 Order at 2.

19 In his Motion for Reconsideration, Plaintiff argues that he does have a likelihood of
20 success on the merits and he has received assistance from another prisoner to overcome his
21 language barrier. These factors were considered but found deficient. In addition, Plaintiff has
22 presented no facts or arguments by which the Court could find that Magistrate Judge
23 Bencivengo’s order was “clearly erroneous or contrary to law.” *See* 28 U.S.C. § 636.
24 Accordingly, Plaintiff’s Motion for Reconsideration is DENIED.

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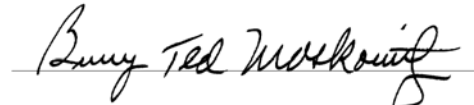
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1 **II. Conclusion and Order**

2 Accordingly, the Court liberally construes Plaintiff's Motion in Objection to United
3 States Magistrate Judge's Order" as a Motion for Reconsideration pursuant to 28 U.S.C. §
4 636(b)(1)(A) and **DENIES** Plaintiff's Motion for Reconsideration [Doc. No. 19].

5 **IT IS SO ORDERED.**

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7 DATED: November 9, 2007

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9 Honorable Barry Ted Moskowitz
10 United States District Judge
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